tions had changed by 1917 and he had then said that the preliminary condition for the revolution "is the smashing, the destruction of the 'ready-made state machine' ". Stalin said, "Therefore, Lenin is right in saying: 'The proletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one * * *.' "

In 1919 the First Congress of the Communist Parties, held in Moscow and headed by Lenin, founded the Communist International (called the Comintern), described by the Communists as a new type of international revolutionary proletarian organization. The theses and statutes adopted by the Comintern in 1920 contained the following:

> "The Communist International makes its aim to put up an armed struggle for the overthrow of the International bourgeoisie and to create an International Soviet Republic as a transition stage to the complete abolition of the State. The Communist International considers the dictatorship of the proletariat as the only means for the liberation of humanity from the horrors of capitalism. The Communist International considers the Soviet form of government as the historically evolved form of this dictatorship of the proletariat.
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> * * * * * * *
>
> "* * * To all intents and purposes the Communist International should represent a single universal Communist Party, of which the parties operating in every country form individual sections. * * *"

The statutes of the International contained the following:

> "Sec. 1. The new International Association of Workers is established for the purpose of organizing common activity of the workers of various countries who are striving towards a single aim: the overthrow of capitalism; the establishment of the dictatorship of the proletariat and of the International

Soviet Republic; the complete abolition of classes, and the realization of socialism—the first step of Communist Society."

And also, among the theses and statutes of the Third International, the following expressions are to be found:

"* * * Only a violent defeat of the bourgeoisie, the confiscation of its property, the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, administrative, municipal, etc., even the individual exile or internment of the most stubborn and dangerous exploiters, the establishment of a strict control over them for the repression of all inevitable attempts at resistance and restoration of capitalist slavery—only such measures will be able to guarantee the complete submission of the whole class of exploiters.

* * * * *

"* * * It is especially necessary to carry on unlawful work in the army, navy, and police, as, after the imperialist slaughter, all the governments in the world are becoming afraid of the national armies, open to all peasants and workingmen, and they are setting up in secret all kinds of select military organizations recruited from the bourgeoisie and especially provided with improved technical equipment."

The *Programme of the Communist International*, a publication of the Workers Library Publishers, Inc., contains the constitution and rules of the Communist International. Included in these rules is the following paragraph:

"Party questions may be discussed by the members of the Party and by Party organizations until such time as a decision is taken upon them by the competent Party committees. After a decision has been taken by the Congress of the Communist International, by the Congress of the respective Sections, or by leading committees of the Comintern, and of its various Sections, these decisions must be unreservedly carried out even if a Section of the Party mem-

bership or of the local Party organizations are in disagreement with it."

The Comintern was dissolved as an organization in 1943, and four years later a new international organization, known as the Communist Information Bureau, or Cominform, was formed by the Communist Parties in countries of Europe and Asia. There is no evidence of any dissolution of the world movement or of any abandonment of the policies and program enunciated by Joseph Stalin. On the contrary, ample evidence is shown that the movement under its Soviet leaders continues as it was planned.

The foregoing is drawn from a considerable mass of material. Out of the whole of the evidence comes a picture of a world movement which has ultimate objectives and interim objectives. The ultimate objective is a classless, stateless society ruled by the proletariat of the world. The basic concepts of this ultimate objective are that the sole value is labor and that capitalism and nationalism are merely means for exploiting the masses of workers. Thus capitalism and nationalism must be destroyed. In the interim the program calls for a small, hard core of revolutionaries, formed into a disciplined Party in every country, who are a vanguard of workers and fighters for the unorganized and suppressed masses of workers. This Party is to attain control of the government of its country for the purpose of destroying its present form and, ultimately, to weld it into the stateless world society. In this interim operation the Party must be ruthless. When the Party takes over the government it is the expectation that the masses will rise and make the Party government a majority government. In this interim period the present government of Russia, the Soviet Union, because it is the first and biggest government thus far brought into control of the Communists,

must be protected and preserved as Communistic at any cost.

The Board made a finding, based on evidence adduced before it, that there exists a world Communist movement substantially as described in Section 2 of the Act. We are of opinion that that finding is supported by a clear preponderance of the evidence.

XIII

We come, then, to the second main division of the facts. This deals with the policies and program of the Party USA and its relationship to the world movement. The Board, pursuant to the mandate of Section 13(e) of the Act, made findings under each of the section's eight subparagraphs, and these, in due course, we will review item by item. For the moment, however, we observe that some things disclose their nature by set characteristics, basic factors which cannot be ignored. Thus we know fish from fowl. In other words, while all relevant facts are cumulative in delineating a completed whole, it is frequently true in respect to derivative facts that certain underlying basic facts; perhaps few in number, determine the final answer. Such facts are heavy in the scales. This is the situation in the case at bar, and we turn now to consideration of some preponderant basic facts. From the record as a whole six such facts emerge as a foundation for the ultimate finding.

1. Prior to 1940 the Communist Party USA was a section of the Communist International, the Comintern. No substantial dispute exists as to this area of the past.

The Third Convention of the Party USA, held in 1921, adopted a resolution which read as follows:

> "The Communist Party will systematically and persistently propagate to the working class the idea of the inevitability of, the necessity for a violent revolution and will prepare the working class for armed insurrection as the only means for the destruction of the bourgeois state and the establishment of the proletarian dictatorship based upon soviet power."

A Special Convention of the Party USA, also held in 1921, adopted a resolution in which it "hereby reaffirms its position as an integral part of the Communist International" and unanimously adopted the 21 Points for Affiliation with the International.

Among the twenty-one conditions for membership in the International thus adopted by the Party USA were the following:

"12. All parties belonging to the Communist International should be formed on the basis of the principle of democratic centralization. At the present time of acute civil war the Communist Party will be able fully to do its duty only when it is organized in a sufficiently thorough way, when it possesses an iron discipline, and when its party centre enjoys the confidence of the members of the party, who are to endow this centre with complete power, authority and ample rights.

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"16. All the resolutions of the congresses of the Communist International, as well as the resolutions of the Executive Committee are binding for all parties joining the Communist International. • • •

"17. In connection with the above, all parties desiring to join the Communist International should alter their name. Each party desirous of joining the Communist International should bear the following name: Communist Party of such and such a country, section of the Third Communist International. • • •

• • • • •

"21. Those members of the party who reject the conditions and the theses of the Third International, are liable to be excluded from the party."

At the Eighth Convention of the Party USA in 1934 a manifesto was adopted, which declared, among other things, "The only way out of the crisis for the toiling masses is the revolutionary way out—the abolition of capitalist rule and capitalism, the establishment of the Socialist society through the power of a revolutionary workers' government, a Soviet government."

A delegation from the Party USA attended the Seventh

Congress of the International in 1935 and were among those who formally assured Stalin "that the Communists will always and everywhere be faithful to the end to the great and invincible banner of Marx, Engels, Lenin and Stalin. Under this banner Communism will triumph throughout the world."

Thus it is clear that in the years prior to 1940 the Communist Party USA was dominated and controlled by the world Communist movement.

The problem in dispute, then, is whether the same condition exists in present times. The Party denies that since 1940 it has been dominated or controlled from abroad. It also says: (1) Past history is not relevant or, even if relevant, is not material;[83] (2) the Party USA was disaffiliated from the Comintern in 1940; and (3) the witnesses who testified to various features of recent operations by the Party were devoid of credibility. We discuss these contentions *seriatim*.

The past is clearly pertinent to the present nature of a person or an organization. Surely a person's education and experience are pertinent to his present nature. The same is true of an organization. As a matter of fact it is rarely, if ever, possible to prove present nature by some instantaneous, contemporaneous fact, totally ignoring the whole of the past. Not only is the past clearly pertinent, it may be quite material to a determination of present nature. Whether it is material depends upon whether there is affirmative evidence of a departure from the established past. In the ordinary affairs of life and in ordinary litigation, if a person or an organization is shown to have had over many years a certain policy and program, and no more is shown, the conclusion

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[83] The Party makes an argument that only post-Act evidence, *i.e.*, evidence relating to activities since the enactment of the statute, is pertinent in the present proceeding, and that such evidence in this record is insufficient to support the findings. We see no basis for such an evidentiary restriction upon proof as to nature, policies and program.

is clearly indicated that he or it has the same policy and program in the present. He may prove that he has changed, and in the light of such evidence the past may lose its materiality. We are of opinion that the past nature of the Party USA is pertinent to the present inquiry and that it may or may not be material, depending upon the evidence showing a departure from the past.

In line with the thought which we have just indicated, the Party says that it disaffiliated itself from the Communist International in 1940. It concludes from that fact that the established nature of its past cannot be considered in determining its present nature. But there are flaws in that contention. The disaffiliation was an organizational separation. The international organization itself was disbanded in 1943, but the world Communist movement did not then cease to exist. The movement, intact both in theory and in program, continued to exist. Stalin was the leader of the Communists long after the Comintern ceased to exist, and he, as we have noted, was the successor to Lenin and protagonist of the ideas of Marx and Lenin. To demonstrate a changed nature in the Party USA, some assertion of a change in substantive belief and program would have to be made. No such evidence was presented by the Party. The tenor of its proof was that the Communist movement is not as this statute and the Attorney General's petition pictured it. The Party witnesses did not assert a cleavage in policy or program between the Party and the international movement. At the time of the disaffiliation the convention of the Party declared that this action was "for the specific purpose of removing itself [the Party] from the terms of the so-called Voorhis Act",[84] "which law would otherwise tend to destroy, and would destroy, the position of the Communist Party as a

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[84] Act of Oct. 17, 1940, 54 STAT. 1201, as amended, 18 U.S.C. § 2386.

legal and open political party of the American working class." The Party's witness Flynn described the event as "a friendly divorce".

We think a mere organizational disaffiliation, without more, does not render evidence of the Party's past immaterial to its present nature.

It seems to us, therefore, that the first major feature of the facts relating to the Party USA is that prior to 1940 the Party was part of the international Communist movement and that, although there was an organizational disaffiliation in 1940, no evidence has been presented which would indicate that since the disaffiliation the Party has repudiated either the policy or the program of the world movement.

2. The Party calls itself the "Communist Party of the United States of America". This is the name specified by the Communist International as the name by which a Party affiliated with the international movement must be known. The Communist parties in the other countries of the world are certainly motivated by a common cause. They have a common doctrinal basis and a common ultimate objective, and they have an international organization, which today, as we have noted, is known as the Communist Information Bureau, or Cominform. The Party USA is not affiliated organizationally with the Cominform, but it is difficult for us to see why the Party would call itself the Communist Party of the U.S.A. if it were not in fact a part of the Communist movement in theory and program.

3. The present organization of the Party USA resulted from a revulsion on the part of a group of its leaders against what they considered a departure from the program and principles of world Communism. In 1944 the Party underwent a reorganization under the leadership of Earl Browder. It became known as the Communist Political Association; it de-emphasized some

Marxism-Leninism principles and advocated a peaceful coexistence of the United States and the Soviet Union. In the spring of 1945 a French communist by the name of Duclos published an article severely criticizing the attitude and action of the Communists in this country. Following that publication a leading Soviet Union Communist, Manuilsky, being then in San Francisco, expressed to the American Communist leaders the view that the Party USA should follow the counsel of the French Communists. Browder's leading antagonist in the Party councils was William Z. Foster, who attacked Browder as preaching anti-Communism, as fighting the Communist Party, and as being a "revisionist". For some years prior to 1940 Foster had been an official of Communist International. In July, 1945, the Communist Political Association was reorganized into the Communist Party of the U.S.A., Browder was ousted, and Foster was made the National Chairman of the Party. Six of the present leaders of the Party were members of the delegation to the convention of the International in 1935 and participated in the declaration of fealty to Stalin.

4. The amended answer of the Party says that Marxism-Leninism is basic to the Communist Party USA. And, as we have pointed out, while the tenets of Marxism-Leninism, forcefully set out in the writings of Marx, Lenin and Stalin, permit a wide flexibility in tactics, that is, of intermediate activities and objectives, they admit of no deviation from the ultimate objective, which is a classless, stateless world. If the Communist Party USA does not adhere to the basic ultimate objective of Marxism-Leninism, some vivid evidence to that effect should be readily available. Such a position on the part of the Communist Party USA would be a noteworthy fact, which surely would be reflected somewhere. But this record contains no such evidence.

In this connection the Party points to the preamble to its constitution, adopted in 1948, which contains the following sentence: "The Communist Party upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties." But that recitation must be viewed in the light of the established position of Communist leaders that American democracy has gone far in protecting the rights of minorities and of working people and in advancing the economic status of such people, and that in that respect American democracy receives the plaudits of those leaders. But that position in no way negates the ultimate stateless world objective of the Communist movement. Further in this connection it is interesting to note the description of the intermediate program of the Party USA, as described by the Party through its witness Gates. Mr. Gates testified that the historic mission of the working class is the establishment of socialism; that the Party USA advocates the peaceful and constitutional road to socialism; that it advocates a party composed of a coalition of all exploited classes and believes that this party will win an election but that the monopolists will not accept this result and will use violence to overthrow the people's government; that the new government should take measures to anticipate this violence and should remove from the army, navy, and police force all generals, etc., who are sympathetic to monopolists, and replace them with officers who are sympathetic to the cause of the common people; that thus the peace government would be forced by necessity to take revolutionary measures to prevent its overthrow; and that this process is in no way contradictory to the principle of dictatorship of the proletariat.

5. We note next, without discussion, that the evidence shows that the Party press, the *Daily Worker*, follows

the views of the publication of the Cominform, which is known as *The Lasting Peace*.

6. The next outstanding feature of the proof is an elaborate demonstration in the evidence presented by the Government that the Party USA has never differed in policy or program with the Soviet Union. Most notable in this evidence was the meticulous portrayal of many major international questions upon which the United States Government and the Soviet Union have differed, and the striking fact that in every such instance the Party USA has supported the position of the Soviet Union. Examples of such matters are the Truman Doctrine, the Marshall Plan, ECA, the North Atlantic Pact, control and inspection of atomic energy, the seating of Yugoslavia in the United Nations Security Council, the representation of China in the United Nations, the peace treaty with Japan, the William Oatis case, and the Korean War. The Party has consistently adhered to the view of the Soviet Union that the United States is an imperialistic nation which seeks world domination. Quite vivid is the identity of the course of the Party USA with the course of the Soviet Union when the latter's course changed abruptly. The Party denounced Fascism in Nazi Germany until the Hitler-Stalin Pact in 1939, when the Party switched to the Soviet Union position. When Pact was abrogated in June, 1941, and Hitler came conflict with the Soviet Union, the Party promptly switched its attitude and thereafter urged that World War II was a just war. The Party strongly opposed lend-lease aid to Great Britain. It took the same position as did the Soviet in 1947-49 in regard to the internal situation in Greece, and in 1948 in respect to the Czech government. Its course precisely paralleled the Soviet Union's actions in respect to the Tito government in Yugoslavia, including an abrupt reversal of attitude in June, 1948, when the Cominform

attacked Tito. At each stage the Party supported the Soviet position in respect to the blockade of Berlin in 1948. Of current significance is the testimony and documentary evidence establishing that the Party USA and the Soviet Union express the same views regarding Korea. Both maintain that the Syngman Rhee government is a reactionary "puppet regime"; both vigorously condemn the hostilities in Korea as the direct result of imperialism and aggression; and both insist the United Nations police action was illegal and aggressive toward North Korea.

The Party does not deny the facts of the identity of the program and policies of the Soviet Union and of the Party. It makes two contentions in respect to them. In the first place it says the statutory phrase "do not deviate from" (Sec. 13(e)(2)) is the sole pertinent inquiry in respect to identity of views and policies, and that that phrase has reference only to instances where the Soviet Union first adopted a policy and the Party thereafter adopted it. That is obviously an untenable argument. The statutory phrase refers to identity or coincidence and not to chronological adoption. In the second place the Party, through its witnesses, says that the identity of views of the Soviet Union and the Party is a coincidence. Thus the witness Gates testified that while he was editor of the *Daily Worker* he could think of no instance where that paper supported this Government in opposition to the Soviet Union; that this was because the Soviet Union has never put forward policies in any way contrary to the interests of the American people. He said that if the Communists in this country have expressed no disagreement with the views of the Cominform it is because they believe those views have not been in contradiction to the interests of the American people. He testified that, so far as he knows, the views and policies of the Soviet Union are truly in

the interests of the American people. The Party witness Flynn testified to the same effect.

It seems to us that the foregoing six considerations—(1) that the Party was prior to 1940 a section of the Communist International, and, although it was disaffiliated organizationally, it presents no evidence of a repudiation of world Communist doctrines; (2) that the Party calls itself the Communist Party of the United States of America; (3) that the present organization of the Party had its origin in a revulsion against a departure from the world Communist program; (4) that Marxism-Leninism is basic to the Party; (5) that the Party's press follows closely world Communist views; and (6) that the policies of the Party and its views upon all issues have for years been identical with those of the world Communist leaders—are the key considerations in the inquiry as to the relationship of the Party to the world movement and its leadership.

XIV.

We turn next to the mandate of Section 13(e) of the statute and to the findings made by the Board pursuant to it.

Petitioner attacks all these findings first upon the same grounds as were its attacks upon these subparagraphs as parts of the statute itself. We have discussed those contentions in detail in discussing the statute. Petitioner also attacks severally the findings under each subparagraph of the section.

Proceeding under the requirement of Section 13(e)(1) the Board made an elaborate examination of the policies and directives of the Party, devoting to the subject almost 130 pages of the printed report. Its conclusions are

stated in eleven paragraphs. In substance they are that the Party's organizational forms are based upon directives of the Soviet Union and are carried out to effectuate the policies of the world Communist movement; that by the acceptance of democratic centralism the Party subjects itself to the authority of the Soviet; that the Party advocates the overthrow of imperialist governments, including the United States; and that the major programs of the Party are set forth by the Soviet for the accomplishment of the objectives of the world Communist movement. Without recapitulating or reciting the multitudinous bits of evidence which underlie these findings, we simply state that in our view a clear preponderance of the evidence supports them. As we have made clear, there is scarcely a dispute as to the period prior to 1940, and there is ample evidence in this record as a whole, when balanced against the proof offered to the contrary, to support their accuracy as to the present.

The Board found that the Party invariably follows the views and policies of the Soviet Union (Sec. 13(e)(2)). We have already discussed non-deviation as one of the chief items of evidence in the case.

The Board found, pursuant to Section 13(e)(3)), that, until the disaffiliation of the Party from the International, the Party received substantial financial aid from and at the direction of the Soviet Union and the International, but that since 1940 only one incident of such aid was shown by the record. The evidence in support of that finding is overwhelming. Indeed it is not seriously controverted. The Party's chief defense on this point is that the evidence is not relevant, a legal question we have discussed.

The Board found (Sec. 13(e)(4) and (5)) that prior to the outbreak of World War II the Party USA sent many representatives to the Soviet Union and they were trained therein Communist policies and program; and that there is no substantial evidence that such rep-

resentatives were sent after the outbreak of that war. The latter conclusion is not disputed, of course; the former is overwhelmingly established. However the Board found that the Party reports to the Soviet Union, largely through representatives of the Soviet in this country. The Party's witnesses categorically denied this claim as it was presented to the Board by the Attorney General. There is little doubt about these reports having been made when the Party was a member of the International; such was one of the "conditions" of the International. There is some doubt that a preponderance of the evidence supports the broad conclusion that the Party "reports to the Soviet Union and its representatives." Such a conclusion seems to imply constant, systematic reporting as of now. The evidence indicates instances, as in the cases of Eisler and Peters. On this record we would strike this finding as phrased. There is a preponderance of evidence, we think, to support a conclusion that upon occasion leaders of the Party report to representatives of the Soviet Union.

The Board, pursuing ~~Section 13~~(e)(6), found that an iron discipline exists throughout the world Communist movement, which requires unquestioned devotion to the program laid down by the Soviet Union, and that the Party has recognized and accepted that requirement. The Party's witness Gates denied that the leaders of the Party USA consider themselves subject to the disciplinary power of the Soviet Union or of any international Communist agency.

The requirement of iron discipline within the Communist movement is one of the basic principles of the movement. It is the "democratic centralism" so vigorously insisted upon by Communist leaders in both speeches and documents. The evidence offered by the Government upon the point included the Classics, many publications, categorical assertions by witnesses on the

stand, and incidents in which those who departed from the Communist program were expelled from the Party, including, among others, the experiences of Gitlow in 1929, Kornfeder in 1934, Johnson in 1940, Lautner in 1950, Tompkins in 1951, and the demotion of Browder in 1945. Identification of the Soviet Union as the leader of the world Communist movement is amply shown. It appears in documents taught in Party classes, in Communist publications, in oral testimony, and in circumstances such as the pledge of fidelity to Stalin by the International convention. We think the finding on this point is supported by a clear preponderance of the proof.

With respect to operations on a secret basis, referred to in Section 13(e)(7) of the Act, the Board made findings on a number of such practices, including concealed membership, refusal to reveal information, secretion of records, deceptive language, the use of aliases, the use of codes, false swearing, secret meetings, reduction of committee memberships, assignment of members to small groups, underground plans and operation, and the infiltration of other organizations. There is no serious dispute as to the facts in respect to these operations. Indeed the Party's witnesses testified to many of them, and the amended answer impliedly admits them. The dispute centers about the purposes of the practices. The Party contended, and now contends, that it was forced into these practices in order to protect the constitutional rights of its members to speak and to assemble, and to safeguard them from social and economic persecution. The Government says that these practices were for the purpose of concealing an unlawful conspiracy. The Board concluded that the practices were undertaken for the purposes of concealing the true nature of the Party and of promoting its objectives.

This question, whether the secret practices of the Party are for the purpose of protecting the liberties of the members or are for the purpose of promoting the

objectives of the Party, is a nebulous one. The two purposes may well overlap. In so far as protection of its members from public identification as Communists also promotes the objectives of the Party, both purposes could exist together. In a doubtful situation such as that on this point, we strike the finding as to purpose. At the same time we are of opinion that the Party's view of the limited purpose of secrecy is not shown by a preponderance of the evidence. On this point we conclude simply that a defined purpose is not proven.

The Board found (Sec. 13(e)(8)) that the purposes of the Party are the antithesis of allegiance to the United States and that the Party's leaders and members consider the allegiance they owe the United States as subordinate to their loyalty and obligations to the Soviet Union. The evidence on this point is long and in great detail. Considerable testimony was given that at Communist schools students were taught that a just war is one in which the Soviet Union has as an adversary an imperialist power, that from the standpoint of a war against the Soviet Union the war is an unjust one for the adversary, and that Party members must adhere to the Soviet Union in any just war. Certainly it is clear beyond question that the Party USA regards the Government of the United States as an imperialist government, and the ultimate essence of the Communist movement is the overthrow of imperialist governments. Certainly prior to 1941 the leaders of the Party USA declared fealty to the Soviet rulers, and the same men are now leaders of the Party. *The Communist Party Manual on Organization,* written by J. Peters and published by the Workers Library Publishers, contains this statement:

> "The Communist Party rallies the masses against imperialistic war and fascism, and for the defense of the Soviet Union.
>
> "The Soviet Union is the only fatherland of workers all over the world. * * *"

Certainly it appears that the Communists bitterly assail the Socialists for advocacy of a peaceful path to power. Repeatedly in Communist publications appears the phrase "the Workers' Fatherland, the Soviet Union," or similar phrases.

The Party relies chiefly upon the text of its constitution and the testimony of the three witnesses whom it presented. The witnesses denied that they owed allegiance to any government except the United States.

The use of the term "allegiance" in connection with a relationship to the Soviet Union injects some confusion into the discussion upon this point. Allegiance implies the formalities of the oath of citizenship, the necessities of military service, etc. Of course citizens of the United States have no such "allegiance" to the Soviet. But the statute itself is not confused upon the matter. It refers to the extent to which members of an organization "consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization." The latter are obligations of a nature different from technical allegiance. The Board accurately phrased the point in its key considerations, saying that the obligations which members have accepted toward the Soviet are completely incompatible with, and the exact antithesis of, allegiance to the United States. We think the conclusion is amply supported.

This opinion is too long to permit of recapitulations. The foregoing recitations will reflect the state of the facts as we find the controlling features to be shown by the record. When the parts are put together, the picture is clear and forceful.

XV

We are of opinion, as hereinabove indicated, that the statute and the order are valid as matters of law. The ultimate finding of the Board was that the Party USA "is substantially directed, dominated and controlled by

the Soviet Union, which controls the world Communist movement referred to in Section 2 of the Act; and that Respondent [the Party] operates primarily to advance the objectives of such world Communist movement." We conclude that this ultimate finding is supported by the basic findings which are in our opinion supported by a preponderance of the evidence, and that the ultimate finding is itself supported by a preponderance of the evidence.

The order of the Board will be

Affirmed.

BAZELON, *Circuit Judge,* dissenting: Suppose an Act of Congress required bands of bank robbers to file with the Attorney General statements of their membership and activities, and imposed criminal penalties upon their leaders and members for failure to do so. Such an Act would compel individuals to disclose their connection with a criminal conspiracy. No argument could reconcile such an Act with the Fifth Amendment's command that "No person * * * shall be compelled in any criminal case to be a witness against himself."

The registration provisions of the Internal Security Act of 1950 are similar.[1] They compel individuals, under

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[1] In 1951, sitting as a member of a three-judge District Court, I voted to deny the motion of the Communist Party for a preliminary injunction. 96 F.Supp. 47. The relief sought by that motion was a stay of the proceeding which the Attorney General had theretofore instituted before the Subversive Activities Control Board. I based denial of discretionary preliminary relief upon a series of estimates of probabilities, which was all we had before us. The Communist Party pointed to nothing in the conduct of the administrative proceedings themselves which would necessarily violate constitutional rights. The issue of coverage remained to be determined by the Board, which might have

criminal penalties, to disclose intimate association with the Communist Party, a disclosure which the Supreme Court has held to be incriminatory.[2] Every "Communist-action" organization must register with the Attorney General,[3] list the names, aliases, and addresses of its members and officers during the preceding twelve months, and account for all money received and spent during that time.[4] The organization must register within thirty days after a final order of the Board,[5] under a penalty of $10,000 for each day's delay.[6] In addition, if it fails to register, § 7(h)[7] requires certain officers to register on its behalf.[8] If the officers do not register within sixty days after the final Board order, § 8(a) requires all individual members to register.[9] Noncompliance by individuals with either § 7(h) or § 8(a) is punishable by a

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found that the Communist Party was not a Communist-action organization, and there was nothing in the administrative procedure or in the provision for judicial review which indicated that they were unconstitutional on their face. Since the Communist Party has now been found to be a Communist-action organization, the questions posed now are different. Because they are different, as Mr. Justice Jackson said, quoting Baron Bramwell, "The matter does not appear to me now as it appears to have appeared to me then." Kristensen v. McGrath, 340 U.S. 162, 178 (1950) (concurring opinion.)

[2] Blau v. United States, 340 U.S. 159, 161 (1950).

[3] Section 7(a), 50 U.S.C. § 786(a) (1952).

[4] Section 7(d), 50 U.S.C. § 786(d) (1952).

[5] Section 7(c), 50 U.S.C. § 786(c) (1952).

[6] Section 15(a)(1), 50 U.S.C. § 794(a)(1) (1952).

[7] 50 U.S.C. § 786(h) (1952).

[8] Section 11.205 of the regulations promulgated under the Act supplements the list of officers who must register. 19 FED. REG. 6035-36 (Sept. 18, 1954).

[9] 50 U.S.C. § 787(a) (1952).

fine of $10,000, five years' imprisonment, or both, for each day's delay.[10]

The registration of the organization, required by § 7(a), must necessarily be executed by some individual or individuals. Congress and the Attorney General have recognized this obvious fact. Section 15(b)[11] punishes "individuals" who willfully falsify or omit a required fact in executing a registration statement required under § 7;[12] and paragraph 6 of the Attorney General's instructions which accompany the registration form for organizations (Form ISA-1) requires the statement to "be signed by the partners, officers, and directors, including the members of the governing body of the organization."

My colleagues recognize that some individual will be "called upon to sign or swear to a registration statement" and may be incriminated by having to disclose his aliases.[13] But they fail to recognize that his signing is a complete though tacit admission that he knows the names of the Party's officers and members, and its organization; that he is himself a member or a confidential employee of the Party; and that he has access to Party books and records. *Blau v. United States* is decisive of this case. The Supreme Court there held that an admission that one is "employ[ed] by the Communist Party or [has] intimate knowledge of its workings" might furnish

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[10] Section 15(a)(2), 50 U.S.C. § 794(a)(2) (1952).

[11] 50 U.S.C. § 794(b) (1952).

[12] See Note, *The Internal Security Act of 1950*, 51 COL.L. REV. 606, 620 (1951), where the author states: "It is obvious * * * that an organization cannot register unless its officers, or other persons designated by the membership, execute a registration statement and continue to make the necessary annual reports."

[13] Majority Opinion, p. 24.

a "link in the chain of evidence needed in a prosecution" under the Smith Act and therefore could not be required.[14]

It is true that the present Act does not in direct terms require any individual to execute a statement for the organization during the thirty-day period within which it must register. But of necessity and also by the Attorney General's instructions, the only individuals who can execute a statement for the organization are those upon whom § 7(h) of the Act, supplemented by § 11.205 of the Regulations, places a duty to register for the organization if it defaults;[15] and these officials are subject to the

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[14] 340 U.S. 159, 161 (1950). The admissions implied in executing the statements for the Communist Party are the very admissions sought from Mrs. Blau: "Mrs. Blau, do you know the names of the State officers of the Communist Party of Colorado?" "Do you know what the organization of the Communist Party of Colorado is, the table of organization of the Communist Party of Colorado?" "Were you ever employed by the Communist Party of Colorado?" "Mrs. Blau, did you ever have in your possession or custody any of the books and records of the Communist Party of Colorado?" "Did you turn the books and records of the Communist Party of Colorado over to any particular person?" "Do you know the names of any persons who might now have the books and records of the Communist Party of Colorado?" "Could you describe to the grand jury any books and records of the Communist Party of Colorado?" *Id.* at 160, n. 1. See cases collected 19 A.L.R. 2d 388.

[15] Under the statute the duty to register falls upon the organization's executive officer, secretary, or the individuals performing the ordinary and usual duties of such officers, and upon such other officers as the Attorney General may prescribe. Under the regulation, "(a) The president, chairman, or other person who is chief officer of the organization. (b) The vice-president, vice-chairman, or person performing similar function. (c) The treasurer. (d) Members of the governing board, council, or body" "jointly with the executive officer and secretary" are made liable to register for the organization after the expiration of thirty days. It

severe criminal penalties of § 15(a)(2)[16] if they fail to perform this duty. Since they will be subject to criminal penalties for failure to register shortly after the thirty-day period has run,[17] as a practical matter they are under heavy pressure to prevent it from running.[18] The "compulsion prohibited by the fifth amendment is not alone physical or mental duress, such as comes from unlawful commands and authoritative orders, * * *,"[19] "the test being whether all things considered the testimony in question was voluntarily given."[20]

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will be recalled that paragraph 6 of the Attorney General's instructions specifies that the organizational registration form shall be signed by the organization's "partners, officers, and directors, including the members of the governing body * * *."

[16] The officers are subject to a fine of $10,000 and imprisonment of five years for each offense. Any offense is defined as one day's failure to register, so that two weeks' nonregistration could mean a fine of $140,000, seventy years in prison, or both.

[17] The designated officers must file the statement within ten days after the organization's thirty-day period has run. Regulations, § 11.205, 19 FED. REG. 6036.

[18] Cf. United States v. Bell, 81 Fed. 830, 837 (W.D.Tenn. 1897), where it was held that a witness, although "technically not under the compulsion of a subpoena," had nevertheless been under compulsion in testifying before an "official having the power to compel him to come, if he should be recalcitrant about it * * *."

[19] United States v. Bell, 81 Fed. 830, 837 (W.D.Tenn. 1897); cf. Boyd v. United States, 116 U.S. 616, 621-22 (1886) (holding that it is equivalent to the compulsory production of papers to make their nonproduction a confession of the allegations it is contended they will prove); and see McKnight v. United States, 115 Fed. 972, 981 (6th Cir. 1902).

[20] United States v. Neff, 212 F.2d 297, 312 (3d Cir. 1954).

Nor are the compulsory self-incrimination provisions of the Act saved by § 4(f). That section provides that "*the fact of registration* of any person * * * *shall not be received in evidence* * * * in any prosecution for any alleged violation of subsection (a) or subsection (c) or for any alleged violation of any other criminal statute." [21] Since this provision merely bars the "fact of registration" as evidence, and leaves the registrant exposed to prosecution for everything to which the registration relates, it does not meet the command of the Supreme Court in *Counselman* v. *Hitchcock*. There, as here, a statute prevented use of extorted disclosures as "evidence" in any criminal proceeding but, as the Court pointed out, the statue did not prevent their use "to search out other testimony to be used in evidence * * * in a criminal proceeding." No grant of immunity is sufficient unless it provides "complete protection from all the perils against which the constitutional prohibition was designed to guard." [22] Nothing less than "absolute immunity against future prosecution for the offence to which the question relates" can serve as a "full substitute for that [constitutional] prohibition." [23]

But my brethren say, in effect, that under the doctrine of *United States* v. *White*,[24] no officer of the Communist Party can assert the constitutional privilege to avoid giving information about the organization which § 7(a)

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[21] 50 U.S.C. § 783(f) (1952); emphasis supplied.

[22] 142 U.S. 547, 564, 585-86 (1892).

[23] *Ibid.* For law review comment asserting the purported immunity to be inadequate, see Meltzer, *Required Records, The McCarran Act, and the Privilege against Self-Incrimination*, 18 U. OF CHI.L.REV. 687, 724 (1951); Comment, *Communist Registration under the McCarran Act and Self-Incrimination*, 1951 WIS.L.REV. 704, 715 (1951).

[24] 322 U.S. 694 (1944).

requires. I do not think the *White* doctrine can be so applied.

In *White* an officer of a labor union had appeared before a grand jury in response to a *subpoena duces tecum* but had declined to produce union documents. His mere appearance as a union officer was not, and was not claimed to be, incriminatory. Instead, he invoked the privilege on the theory that the demanded documents were incriminating. The Court replied that he could not "place under the protective shield of the privilege * * * official union documents held by him in his capacity as a representative of the union." [25] The vice of the present statute is not that it compels someone to produce incriminatory documents, but that it *compels someone to identify himself as a Communist Party functionary.* Such identification, unlike identification as a corporate or union official, is incriminatory under the *Blau* case.[26] That situation was not involved in *White*, nor in *Rogers* v. *United States*, since the witness there had "freely described her membership, activities and office in the Party." [27] This fundamental difference makes the *White* case inapplicable. There are two further distinctions.

(1) Section 7(d) requires the *preparation of a statement* naming the organization, listing its members and officers (and their aliases), describing the officers' duties and functions, and accounting for money received and

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[25] *Id.* at 704.

[26] See n. 14 and text, *supra*.

[27] 340 U.S. 367, 372 (1951). In United States v. Field, 193 F.2d 109 (2d Cir. 1951), an official of the Bail Fund Committee of the Civil Rights Congress declined to produce the organization's documents on the ground that to do so would in itself be incriminatory. The argument was rejected by the Second Circuit solely on the ground that earlier, in the same proceeding, he had admitted being a trustee of the fund.

spent. Hence incriminating information is, in effect, "forced from the lips of the [executing officer], rather than obtained from the records or books." [28] As the Second Circuit has held, "the production of records must be distinguished from * * * testimony as to what the records would contain, had they been produced." [29]

(2) I do not think the *White* doctrine applies even as to books and records of the Communist Party, notwithstanding the dictum in *Rogers* that there is no privilege with respect to the books of the Party. Under the *White* test, the privilege is unavailable to officers of an organization only when the organization's character is "so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only." [30] The "impersonal" criterion, as discussed by the Court, clearly indicates that unions, other lawful associations, and corporations are to be distinguished from

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[28] United States v. Daisart Sportswear, 169 F.2d 856, 862 2d Cir. 1948). See Note, *The Internal Security Act of 1950*, 51 COL.L.REV. 606, 621 (1951), where the author states: "The execution of a registration statement by an individual would at least require him to confirm and transpose selected material from the organization's records to the registration statement. Since an organization need not keep complete records prior to registration, in many cases the officer would be forced to execute the registration statement by relying on his own knowledge. It is clear that in both instances the officer is doing more than producing records and identifying them. He is disclosing other matters of his personal knowledge."

[29] 169 F.2d at 862.

[30] 322 U.S. at 701.

criminal conspiracies.[31] Only by ignoring the history of the decade since *White* can the Communist Party be equated to an ordinary corporation, union or association. For in that decade it has been established that officers of the Communist Party are engaged in a conspiracy to violate the Smith Act.[32] Since these officers, unlike the officers of "impersonal" organizations, are co-conspirators, bound by the acts of other officers in pursuance of the conspiracy and subject to criminal penalties for such acts, the *White* case does not touch the self-incrimination problems posed by this Act.

In *Boyd* v. *United States* [33] the Supreme Court declared "unconstitutional and void" a statute which merely imposed economic pressure to produce incriminating documents. State courts have invalidated various statutes that compelled self-incrimination,[34] including two that re-

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[31] In finding unions similar to corporations, the Court enumerated features common to both which are clearly inapplicable to criminal conspiracies: "Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do"; "no member or officer has the right to use [the union's books and records] for criminal purposes * * *"; "the actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question"; and "the members are not subject to either criminal or civil liability for the acts of the union or its officers as such unless it is shown that they personally authorized or participated in the particular acts." 322 U.S. at 702.

[32] Dennis v. United States, 341 U.S. 494, 516-17 (1951); Frankfeld v. United States, 198 F.2d 679 (4th Cir. 1952).

[33] 116 U.S. 616, 638 (1886).

[34] In re DeWar, 148 A. 489 (Vt. 1930) (statute requiring persons convicted of intoxication to disclose name of person from whom liquor obtained held "unconstitutional and void"); People v. Reardon, 90 N.E. 829 (N.Y. 1910) (statute

quired members of the Communist Party to register,[35] I would do the same with the present statute. Section 14(a)[36] permits a "party aggrieved" by respondent's order to obtain judicial review. Plainly the Communist Party is "aggrieved." Therefore it may challenge the legality of the Board's order even though the constitutional rights invaded are those of other persons and not of the Party itself.[37]

The Government and my brethren would postpone determination of constitutionality until a Communist Party official has declined to register for the Party on self-incrimination grounds. First, they say that an official may register voluntarily. But as I have pointed out, the coercion to register precludes voluntary compliance as a matter of law. In *Boyd* the Supreme Court held a statutory disclosure requirement "void" although, theoretically at least, someone within its scope might at some time have voluntarily made the required disclosures. Second, they argue that a Communist Party official might suffer no "substantial detriment" either because he had already disclosed his Communist affiliations in other proceedings or because he had already been convicted under the Smith Act. But the privilege can never be lost in any such

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compelling individual to submit to investigation of books and papers kept in private business for purpose of furnishing evidence in criminal prosecution held to violate self-incrimination clause of State constitution); State v. Simmons Hardware Co., 18 S.W. 1125 (Mo. 1892) (statute requiring officers of every corporation to inform Secretary of State whether company is violating State anti-trust law held void).

[35] People v. McCormick, 228 P.2d 349 (Cal. 1951); Maryland v. Perdew, 19 U.S.L. WEEK 2357 (Md. C.C., Allegany Cty., 1951).

[36] 50 U.S.C. § 793(a) (1952).

[37] National Coal Ass'n v. Federal Power Comm'n, 89 U.S.App. D.C. 135, 191 F.2d 462 (1951); Associated Industries v. Ickes, 134 F.2d 694 (2d Cir. 1943).

way. "The privilege is not waived by testimony given in a previous proceeding, even in the same case."[38] It is waived only by testimony in the same proceeding. Hence the individuals referred to by my brethren as having admitted Communist Party affiliations at the hearing before the Board did not thereby waive their privilege.[39] And the previous conviction of some Communist Party officials confers no immunity upon them from further prosecution based upon later Communist affiliation. Third, it is urged that the privilege "must be specifically asserted at the time a particular question is asked * * *."[40] But that doctrine applies only where it is not plain from the inquiry itself that incriminating disclosures are de-

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[38] United States v. Steffen, 103 F.Supp. 415, 417 (N.D. Cal. 1951); see also Marcello v. United States, 196 F.2d 437 (5th Cir. 1952); United States v. Field, 193 F.2d 109 (2d Cir. 1951); United States v. Peckhart, 103 F.Supp. 417 (N.D.Cal. 1952); United States v. Malone, 111 F.Supp. 37 (N.D.Cal. 1953) (waiver before grand jury held not to bar privilege at trial on indictment returned by same grand jury); Note, 36 A.L.R. 2d 1403 (1954). Other state authorities are collected in United States v. Steffen, *supra*, 103 F. Supp. at 417, n. 4. See WIGMORE § 2276(4) (3d ed. 1940).

[39] In the three-judge court suit brought by the Communist Party (see n. 1, *supra*), one of the grounds urged for enjoining hearings before the Board was that to properly defend itself at such hearings Communist Party officials would necessarily have to testify and that such testimony would necessarily entail their admission of Communist Party affiliations. Those officials who testified at the hearing did so only after denial of relief in that suit. Moreover, they testified more than two years ago. A fresh disclosure of continued Party office would clearly constitute a "substantial detriment," particularly in view of the intervening Board determination that the Party is a Communist-action organization.

[40] Brief for Government, p. 56.

manded.[41] It is plain here. Since any person who comes forward, even to claim the privilege, thereby identifies himself as a Communist Party functionary,[42] to require him to claim the privilege would, in the words

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[41] In a judicial or legislative proceeding, where most questions asked will not necessarily require incriminating answers, the tribunal must be put on notice that in a particular instance the Fifth Amendment may apply. See, *e.g.*, Vajtauer v. Commissioner, 273 U.S. 103, 113 (1927), where the Court said: "It is for the tribunal conducting the trial to determine what weight should be given to the contention of the witness that the answer sought will incriminate him, *a determination which it cannot make if not advised of the contention.* The privilege may not be relied on and must be deemed waived if *not in some manner fairly brought to the attention of the tribunal which must pass upon it.*" [Emphasis supplied.] Similarly, under a revenue statute requiring all taxpayers to give information about their sources of income either in a return or an investigation, the enforcing authorities must be put on notice that as to a particular taxpayer the Fifth Amendment may bar the required disclosure. See United States v. Sullivan, 274 U.S. 259, 263 (1927), where the Court said: "If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not on that account refuse to make any return at all." The matter was well expressed by the Seventh Circuit in Murdock v. United States, 62 F.2d 926, 927 (1932): "* * * a citizen from whom information is sought under a statute enacted pursuant to authority granted to Congress by the Sixteenth Amendment may invoke or waive the protection provided by the Fifth Amendment. And likewise the courts will compel the production of information, *subject, however, to the right of said taxpayer to justify his refusal so to do by showing facts that bring him within the protection of the Fifth Amendment.* Thus construed, the statute under consideration is not unconstitutional." [Emphasis supplied.]

[42] This is so because the only persons within the class required to act are Communist functionaries. As in the case of the hypothetical bank robber statute, to claim the privi-

of Chief Justice Marshall, "strip him of the privilege which the law allows * * *."[43]

In reviewing administrative action, the court "may adjust its relief to the exigencies of the case in accordance with equitable principles governing judicial action."[44] Equitable principles, even in the absence of a statute providing for judicial review, justify the relief I would grant in this case. *Truax* v. *Raich* is in point. There the complainant was an alien employee who was threatened with discharge because of a state statute which penalized only the employer for employing more than a certain percentage of aliens. It did not penalize employees. The Supreme Court held the threatened injury to the complainant brought the case "within the class in which, if the unconstitutionality of the act is shown, equitable relief may be had."[45] And Government officers have been enjoined "from bringing criminal proceedings to compel obedience to unconstitutional requirements."[46]

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lege is to admit that one is within the class to which the statute relates.

[43] United States v. Burr, 25 Fed.Cas. 38, 40, No. 14692(e) (C.C.Va. 1807); see also Hoffman v. United States, 341 U.S. 479, 486 (1951), where the Court declared: "* * * if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee."

[44] Ford Motor Co. v. National Labor Relations Board, 305 U.S. 364, 373 (1939); United States v. Morgan, 307 U.S. 183, 191 (1939); see Davis, ADMINISTRATIVE LAW 727 (1951).

[45] 239 U.S. 33, 39 (1915). See also Terrace v. Thompson, 263 U.S. 197 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[46] Philadelphia Co. v. Stimson, 223 U.S. 605, 621 (1912). See also Ex parte Young, 208 U.S. 123 (1908); and cases cited n. 45, *supra*.

Since Congress has enlarged the area of incrimination with regard to the Communist Party, and since the Supreme Court has found the enlargement permissible, we must see that the constitutional guarantee against compulsory self-incrimination is co-extensive with the widened danger.

The Fifth Amendment, as Dean Griswold has said, "is a clear and eloquent expression of our basic opposition to collectivism, to the unlimited power of the state. It would never be allowed by Communists, and thus it may well be regarded as one of the signs which sets us off from Communism." [47]

Since I would void the Act on Fifth Amendment grounds, I do not consider the petitioner's other contentions.

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[47] Griswold, *The Fifth Amendment As a Symbol*, HARV. LAW SCHOOL RECORD (Oct. 21, 1954).

[fol. 2172] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT, OCTOBER TERM, 1954

No. 11,850

October Term, 1954

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, Petitioner

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent

On Petition for Review of Order of the Subversive Activities Control Board.

Before: Prettyman, Bazelon, and Danaher, Circuit Judges.

JUDGMENT AND DECREE—December 23, 1954

This case came on to be heard on the transcript of the record from the Subversive Activities Control Board, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the order of the Subversive Activities Control Board on review herein be, and it is hereby, affirmed.

Dated: December 23, 1954.

Per Circuit Judge Prettyman.

Separate dissenting opinion by Circuit Judge Bazelon.

[fols. 2173-2198] Petition for rehearing covering 25 pages filed January 6, 1955. Omitted from this print. It was denied, and nothing more by order January 14, 1955.

[fol. 2199] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

Before: Stephens, Chief Judge, and Edgerton, Wilbur K. Miller, Prettyman, Bazelon, Fahy, Washington, Danaher and Bastian, Circuit Judges, in Chambers.

ORDER OF THE COURT IN BANC DENYING REHEARING—January 14, 1955

Upon consideration of petitioner's petition for a rehearing in banc in the above entitled case, it is

Ordered by the Court that the aforesaid petition for a rehearing in banc be, and it is hereby, denied.

Per Curiam.

Dated: January 14, 1955.

Circuit Judge Fahy did not participate in the above order.

[fols. 2200-2203] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

Before: Prettyman, Bazelon and Danaher, Circuit Judges, in Chambers.

ORDER OF THE COURT DENYING REHEARING, ETC.—January 14, 1955

On consideration of petitioner's petition for a rehearing of the above entitled case by the division of the Court deciding the case, it is

Ordered by the Court that the petition for rehearing be, and it is hereby, denied.

Per Curiam.

Dated: January 14, 1955.

[fols. 2204-2205] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 2206] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1954

No. 718

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,
Petitioner

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ORDER ALLOWING CERTIORARI—Filed May 31, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.